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LIVE ART, INC.; and SIRI GALLIANO

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

EASTERN DIVISION

RICHTONE DESIGN GROUP L.L.C.,
and SEAN P. GALLAGHER,

Plaintiffs,

vs.

LIVE ART, INC., d/b/a/ LIVE ART
STUDIO d/b/a, LIVE ART PILATES,
d/b/a BIG BEAR PILATES, SIRI
GALLIANO, JANE DOES 1-10;
JOHN DOES 1-10; and XYZ
COMPANIES 1-10 jointly and
severally,

Defendants.

Case No. EDCV14-122 FMO (DTBx)

**DEFENDANT SIRI GALLIANO'S
ANSWER TO FIRST AMENDED
COMPLAINT**

DEMAND FOR JURY TRIAL

Hon. Fernando M. Olguin

1 Defendant Siri Galliano (“Defendant” or “Ms. Galliano”), through counsel,
2 answers the First Amended Complaint of plaintiffs Richtone Design Group L.L.C.
3 (“Richtone”) and Sean P. Gallagher (“Gallagher,” collectively, “Plaintiffs”) as
4 follows:

5 **JURISDICTION AND PARTIES**

6 1. In answering paragraph 1 of the First Amended Complaint, Defendant
7 admits that this purports to be an action for infringement under the Copyright Act of
8 1976, 17 U.S.C. § 101, *et seq.* Defendant denies each and every other allegation.

9 2. In answering paragraph 2 of the First Amended Complaint, Defendant
10 admits this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and
11 1338(a), that venue is proper pursuant to 28 U.S.C. § 1400(a), and that Defendant
12 does business and can be found in this judicial district. Defendant lacks sufficient
13 information to admit or deny the other allegations and, on that basis, denies.

14 3. In answering paragraph 3 of the First Amended Complaint, Defendant
15 lacks sufficient information to admit or deny the allegations in this paragraph and, on
16 that basis, denies.

17 4. In answering paragraph 4 of the First Amended Complaint, Defendant
18 lacks sufficient information to admit or deny the allegations in this paragraph and, on
19 that basis, denies.

20 5. In answering paragraph 5 of the First Amended Complaint, Defendant
21 admits that Live Art, Inc. is a California corporation with its principal place of
22 business in Big Bear Lake, California and that it used to do business as Live Art
23 Pilates. Defendant denies each and every other allegation.

24 6. In answering paragraph 6 of the First Amended Complaint, Defendant
25 admits that Ms. Galliano is a California resident, that Ms. Galliano operates a business
26 out of Big Bear Lake, California, that Ms. Galliano is the principal owner and officer
27 of defendant Live Art, Inc., and that Live Art, Inc. used to do business as Live Art
28 Pilates. Defendant denies each and every other allegation.

7. In answering paragraph 7 of the First Amended Complaint, Defendant admits the allegations.

8. In answering paragraph 8 of the First Amended Complaint, Defendant admits that Live, Art, Inc. is a California corporation with its principal place of business in Big Bear Lake, California and does business as Big Bear Pilates. Defendant admits that Siri Galliano is a California resident, operates a business out of Big Bear Lake, California, and is the principal owner and officer of Live Art, Inc. Defendant admits that Ms. Galliano and Live Arts, Inc. are in the business of conducting Pilates instruction and that their current address is P.O. Box 1749, Big Bear Lake, California 92315. Defendant denies each and every other allegation.

9. In answering paragraph 9 of the First Amended Complaint, Defendant lacks sufficient information to admit or deny the allegations in this paragraph and, on that basis, denies.

BACKGROUND

10. In answering paragraph 10 of the Complaint, Defendant lacks sufficient information to admit or deny the allegations in this paragraph and, on that basis, denies.

11. In answering paragraph 11 of the First Amended Complaint, Defendant lacks sufficient information to admit or deny the allegations in this paragraph and, on that basis, denies.

12. In answering paragraph 12 of the First Amended Complaint, Defendant lacks sufficient information to admit or deny the allegations in this paragraph and, on that basis, denies.

13. In answering paragraph 13 of the First Amended Complaint, Defendant lacks sufficient information to admit or deny the allegations in this paragraph and, on that basis, denies.

1 14. In answering paragraph 14 of the First Amended Complaint, Defendant
2 lacks sufficient information to admit or deny the allegations in this paragraph and, on
3 that basis, denies.

4 15. In answering paragraph 15 of the First Amended Complaint, Defendant
5 lacks sufficient information to admit or deny the allegations in this paragraph and, on
6 that basis, denies.

7 16. In answering paragraph 16 of the First Amended Complaint, Defendant
8 lacks sufficient information to admit or deny the allegations in this paragraph and, on
9 that basis, denies.

10 17. In answering paragraph 17 of the First Amended Complaint, Defendant
11 lacks sufficient information to admit or deny the allegations in this paragraph and, on
12 that basis, denies.

13 18. In answering paragraph 18 of the First Amended Complaint, Defendant
14 lacks sufficient information to admit or deny the allegations in this paragraph and, on
15 that basis, denies.

16 19. In answering paragraph 19 of the First Amended Complaint, Defendant
17 lacks sufficient information to admit or deny the allegations in this paragraph and, on
18 that basis, denies.

19 20. In answering paragraph 20 of the First Amended Complaint, Defendant
20 lacks sufficient information to admit or deny the allegations in this paragraph and, on
21 that basis, denies.

22 21. In answering paragraph 21 of the First Amended Complaint, Defendant
23 lacks sufficient information to admit or deny the allegations in this paragraph and, on
24 that basis, denies.

25 22. In answering paragraph 22 of the First Amended Complaint, Defendant
26 lack sufficient information to admit or deny the allegations in this paragraph and, on
27 that basis, denies.

1 23. In answering paragraph 23 of the First Amended Complaint, Defendant
2 lacks sufficient information to admit or deny the allegations in this paragraph and, on
3 that basis, denies.

4 24. In answering paragraph 24 of the First Amended Complaint, Defendant
5 lacks sufficient information to admit or deny the allegations in this paragraph and, on
6 that basis, denies.

7 25. In answering paragraph 25 of the First Amended Complaint, Defendant
8 lacks sufficient information to admit or deny the allegations in this paragraph and, on
9 that basis, denies.

10 26. In answering paragraph 26 of the First Amended Complaint, Defendant
11 lacks sufficient information to admit or deny the allegations in this paragraph and, on
12 that basis, denies.

13 27. In answering paragraph 27 of the First Amended Complaint, Defendant
14 lacks sufficient information to admit or deny the allegations in this paragraph and, on
15 that basis, denies.

16 28. In answering paragraph 28 of the First Amended Complaint, Defendant
17 lacks sufficient information to admit or deny the allegations in this paragraph and, on
18 that basis, denies.

19 29. In answering paragraph 29 of the First Amended Complaint, Defendant
20 lacks sufficient information to admit or deny the allegations in this paragraph and, on
21 that basis, denies.

22 30. In answering paragraph 30 of the First Amended Complaint, Defendant
23 lacks sufficient information to admit or deny the allegations in this paragraph and, on
24 that basis, denies.

25 31. In answering paragraph 31 of the First Amended Complaint, Defendant
26 lacks sufficient information to admit or deny the allegations in this paragraph and, on
27 that basis, denies.

1 32. In answering paragraph 32 of the First Amended Complaint, Defendant
2 lacks sufficient information to admit or deny the allegations in this paragraph and, on
3 that basis, denies.

4 33. In answering paragraph 33 of the First Amended Complaint, Defendant
5 admits the allegations with the qualification that Richtone filed the lawsuit.

6 34. In answering paragraph 34 of the First Amended Complaint, Defendant
7 admits that Siri Galliano submitted a declaration in *Richtone Design Group L.L.C. v.*
8 *Live Art, Inc., et al.*, United States District Court, Southern District of New York,
9 Case No. 12 Civ. 7652 (JFK), in which she stated that Live Art, Inc. made copies of
10 instructions given to her by a Pilates instructor in Florida. Defendant lacks sufficient
11 information to admit or deny the other allegations in this paragraph and, on that basis,
12 denies.

13 35. In answering paragraph 35 of the First Amended Complaint, Defendant
14 lacks sufficient information to admit or deny the allegations in this paragraph and, on
15 that basis, denies.

16 36. In answering paragraph 36 of the First Amended Complaint, Defendant
17 admits that, in March 2010, Richtone filed an amended complaint in *Richtone Design*
18 *Group L.L.C. v. Live Art, Inc., et al.*, United States District Court, Southern District of
19 New York, Case No. 12 Civ. 7652 (JFK), in which it added an allegation that Live Art
20 was selling pictures it referred to as the “VAu Pictures.” Defendant lacks sufficient
21 information to admit or deny the other allegations in this paragraph and, on that basis,
22 denies.

23 37. In answering paragraph 37 of the First Amended Complaint, Defendant
24 admits that Ms. Galliano stated in the Pilates Post, dated April 4, 2013, that she was
25 “selling off some Archival items for legal funds” and referred to Sean Gallagher as the
26 “Pilates Predator.” Defendant admits that she had pro bono representation at the time.
27 Defendant lacks sufficient information to admit or deny the other allegations in this
28 paragraph and, on that basis, denies.

38. In answering paragraph 38 of the First Amended Complaint, Defendant admits that the Pilates Post had an option to purchase photographs of Joseph Pilates in July 2013 through Paypal. Defendant lacks sufficient information to admit or deny the other allegations in this paragraph and, on that basis, denies.

39. In answering paragraph 39 of the First Amended Complaint, Defendant admits that the court dismissed *Richtone Design Group L.L.C. v. Live Art, Inc., et al.*, United States District Court, Southern District of New York, Case No. 12 Civ. 7652 (JFK) for lack of personal jurisdiction. Defendant denies each and every other allegation.

Count I

INFRINGEMENT OF COPYRIGHT

(Unauthorized Copying) (The 1993 Manual, The VAu Photographs)

40. In answering paragraph 40 of the First Amended Complaint, Defendant realleges and incorporates paragraphs 1 through 39 above as if fully set forth herein.

41. In answering paragraph 41 of the First Amended Complaint, Defendant lacks sufficient information to admit or deny the allegations in this paragraph and, on that basis, denies.

42. In answering paragraph 42 of the First Amended Complaint, Defendant lacks sufficient information to admit or deny the allegations in this paragraph and, on that basis, denies.

43. In answering paragraph 43 of the First Amended Complaint, Defendant lacks sufficient information to admit or deny the allegations in this paragraph and, on that basis, denies.

44. In answering paragraph 44 of the First Amended Complaint, Defendant denies that such acts were or constitute willful copyright infringement, that she regularly holds herself out as having been trained in Pilates, Inc.'s program, and that she maintains business ties with Brett Howard. Defendant admits that she has represented that she had a good relationship with Romana Kryzanowska. Defendant

1 lacks sufficient information to admit or deny the remaining allegations and, on that
2 basis, denies.

3 45. In answering paragraph 45 of the First Amended Complaint, Defendant
4 denies each and every allegation.

5 **Count II**

6 **INFRINGEMENT OF COPYRIGHT**

7 **(Unauthorized Copying) (The Manual, The VAu Photographs)**

8 46. In answering paragraph 46 of the First Amended Complaint, Defendant
9 realleges and incorporates paragraphs 1 through 45 above as if fully set forth herein.

10 47. In answering paragraph 47 of the First Amended Complaint, Defendant
11 lacks sufficient information to admit or deny the allegations and, on that basis, denies.

12 48. In answering paragraph 48 of the First Amended Complaint, Defendant
13 lacks sufficient information to admit or deny the allegations and, on that basis, denies.

14 49. In answering paragraph 49 of the First Amended Complaint, Defendant
15 lacks sufficient information to admit or deny the allegations and, on that basis, denies.

16 50. In answering paragraph 50 of the First Amended Complaint, Defendant
17 denies that such acts were or constitute willful copyright infringement. Defendant
18 lacks sufficient information to admit or deny the remaining allegations and, on that
19 basis, denies.

20 51. In answering paragraph 51 of the First Amended Complaint, Defendant
21 denies each and every allegation.

22 **Count III**

23 **INFRINGEMENT OF COPYRIGHT**

24 **(Unauthorized Copying) (The Manual, The TX Copyright)**

25 52. In answering paragraph 52 of the First Amended Complaint, Defendant
26 realleges and incorporates paragraphs 1 through 51 above as if fully set forth herein.

27 53. In answering paragraph 53 of the First Amended Complaint, Defendant
28 lacks sufficient information to admit or deny the allegations and, on that basis, denies.

1 information to admit or deny the remaining allegations in this paragraph and, on that
2 basis, denies.

3 63. In answering paragraph 63 of the First Amended Complaint, Defendant
4 denies each and every allegation.

5 **Count V**

6 **CONTRIBUTORY COPYRIGHT INFRINGEMENT**

7 **(Liability of Officers and Employees)**

8 64. In answering paragraph 64 of the First Amended Complaint, Defendant
9 realleges and incorporates paragraphs 1 through 63 above as if fully set forth herein.

10 65. In answering paragraph 65 of the First Amended Complaint, Defendant
11 lacks sufficient information to admit or deny the allegations and, on that basis, denies.

12 66. In answering paragraph 66 of the First Amended Complaint, Defendant
13 lacks sufficient information to admit or deny the allegations and, on that basis, denies.

14 67. In answering paragraph 67 of the First Amended Complaint, Defendant
15 lacks sufficient information to admit or deny the allegations and, on that basis, denies.

16 **AFFIRMATIVE DEFENSES**

17 **First Affirmative Defense**

18 **(Failure to State a Claim)**

19 1. As a first and separate affirmative defense, Defendant alleges that the
20 First Amended Complaint fails to state facts sufficient to constitute a cause of action
21 against her.

22 **Second Affirmative Defense**

23 **(Standing)**

24 2. As a second and separate affirmative defense, Defendant alleges that
25 Plaintiffs' claims are barred to the extent that one or both of them lack standing.

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Third Affirmative Defense

(Waiver)

3. As a third and separate affirmative defense, Defendant alleges that Plaintiffs, by reason of their own conduct and actions, have waived any rights they may have against Defendant.

Fourth Affirmative Defense

(Estoppel)

4. As a fourth and separate affirmative defense, Defendant alleges that Plaintiffs' recovery is limited or barred by the doctrine of estoppel.

Fifth Affirmative Defense

(Laches)

5. As a fifth and separate affirmative defense, Defendant alleges that Plaintiffs, by their own actions or inactions upon which Defendant reasonably relied to her detriment, are barred by the doctrine of laches from asserting any claims they may have had.

Sixth Affirmative Defense

(Statute of Limitations/Repose)

6. As a sixth and separate affirmative defense, Defendant alleges that Plaintiffs' purported claims for relief against Defendant are barred by the applicable statutes of limitation or repose, including, but not limited to, 17 U.S.C. section 507.

Seventh Affirmative Defense

(Acts or Omissions of Others)

7. As a seventh and separate affirmative defense, Defendant alleges that Plaintiffs' claims are barred, in whole or in part, due to the acts or omissions of persons other than Defendant over which Defendant has no control.

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Eighth Affirmative Defense

(Consent and/or Permission)

8. As an eighth and separate affirmative defense, Defendant alleges that Plaintiffs have expressly and/or impliedly consented to the alleged conduct complained of in the First Amended Complaint.

Ninth Affirmative Defense

(Ratification)

9. As a ninth and separate affirmative defense, Defendant alleges that Plaintiffs are barred from obtaining any relief because any allegedly improper acts by Defendant were ratified by Plaintiffs.

Tenth Affirmative Defense

(Unclean Hands)

10. As a tenth and separate affirmative defense, Defendant alleges that Plaintiffs' claim are barred, in whole or in part, by the doctrine of unclean hands.

Eleventh Affirmative Defense

(Failure to Mitigate)

11. As an eleventh and separate affirmative defense, Defendant alleges that Plaintiffs' recovery is limited or barred due to their failure to mitigate damages, if any.

Twelfth Affirmative Defense

(Offset)

12. As a twelfth and separate affirmative defense, Defendant alleges that she is entitled to offset Plaintiffs' damages, if any, in the amount of any recovery Plaintiffs obtain from any other source.

Thirteenth Affirmative Defense

(Fair Use)

13. As a thirteenth and separate affirmative defense, Defendant alleges that Defendant's use, if any, of any material protected by copyright is protected by the doctrine of fair use.

Fourteenth Affirmative Defense

(Public Domain)

14. As a fourteenth and separate affirmative defense, Defendant alleges that Plaintiffs are barred from obtaining any relief because the works that Plaintiffs allege to own in this matter are in the public domain.

Fifteenth Affirmative Defense

(No Statutory Damages)

15. As a fifteenth and separate affirmative defense, Defendant alleges that Plaintiffs are precluded from recovering statutory damages or attorney's fees for copyright infringement by virtue of 17 U.S.C. § 412.

Sixteenth Affirmative Defense

(First Amendment)

16. As a sixteenth and separate affirmative defense, Defendant alleges that Plaintiffs are barred from obtaining the relief they seek by the First Amendment to the Constitution of the United States of America and Article I, § 2(a) of the Constitution of the State of California.

Seventeenth Affirmative Defense

(Good Faith)

17. As a seventeenth and separate affirmative defense, Defendant alleges that Plaintiffs are barred from obtaining the relief they seek as Defendant acted in good faith and without intent to infringe.

Eighteenth Affirmative Defense

(Invalid Copyright Registration)

18. As an eighteenth and separate affirmative defense, Defendant alleges that Plaintiffs are barred from obtaining the relief they seek as a result of Plaintiffs' misstatements and omissions, if any, in any copyright registrations, assignments and/or notices that they submitted for the material at issue.

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Nineteenth Affirmative Defense

(Non-Protectibility)

19. As a nineteenth and separate affirmative defense, Defendant alleges that if any material, concepts, or ideas in Plaintiffs' works were in any manner copied by Defendant, Plaintiffs are precluded from obtaining any relief therefore because such material, concepts, and/or ideas do not constitute material protected by the laws of the United States or the State of California.

Twentieth Affirmative Defense

(Lack of Originality or Novelty)

20. As a twentieth and separate affirmative defense, Defendant alleges that Plaintiffs are barred from obtaining the relief they seek because none of the material, concepts, and ideas in Plaintiffs' works that were allegedly copied by Defendant are original, novel, or of any value.

Twenty-First Affirmative Defense

(Copyright Misuse)

21. As a twenty-first and separate affirmative defense, Defendant alleges that Plaintiffs' claims related to their purported copyrights are barred, in whole or in part, by the doctrine of copyright misuse, insofar as Plaintiffs unlawfully have used their purported copyrights as part of an attempt to enforce their rights beyond those granted by the United States Copyright Act.

Twenty-Second Affirmative Defense

(Fraud on the Copyright Office)

22. As a twenty-second and separate affirmative defense, Defendant alleges that Plaintiffs' claims are barred, in whole or in part, by their fraud on the United States Copyright Office.

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Twenty-Third Affirmative Defense

(License)

23. As a twenty-third and separate affirmative defense, Defendant alleges that the use of the purported copyrighted works was permitted by an express or implied license or agreement.

ADDITIONAL AFFIRMATIVE DEFENSES

Defendant reserves the right to amend this Answer and/or allege additional affirmative defenses and additional facts supporting her defenses after conducting further discovery, investigation, research, and analysis.

PRAYER FOR RELIEF

Wherefore, Defendant prays for relief as follows:

1. That Plaintiffs take nothing by way of the Complaint;
2. That judgment be entered in favor of Defendant;
3. That Defendant be awarded her costs of suit incurred herein and any attorneys' fees permitted by statute, including the Copyright Act; and
4. Any other relief the Court deems appropriate.

Respectfully submitted,

Dated: May 5, 2014

KATTEN MUCHIN ROSENMAN LLP
Kristin L. Holland
Meegan Maczek
Rebecca F. Ganz

By: /s/ Meegan Maczek
Meegan Maczek
Attorneys for Defendants
LIVE ART, INC.; and SIRI GALLIANO

DEMAND FOR JURY TRIAL

Defendant Siri Galliano respectfully demands a trial by jury on any and all causes of action, claims for relief, and issues that are so triable.

Respectfully submitted,

Dated: May 5, 2014

KATTEN MUCHIN ROSENMAN LLP
Kristin L. Holland
Meegan Maczek
Rebecca F. Ganz

By: /s/ Meegan Maczek
Meegan Maczek
Attorneys for Defendants
LIVE ART, INC.; and SIRI GALLIANO